



ACCESS

ACCESS Facility

The global platform that supports rights-compatible, interest-based problem solving to prevent and resolve conflicts between companies and communities.

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EXPERT MEETING REPORT

Available at: <http://accessfacility.org/expertmeeting-April2014>

ACCESS to Remedy in Context of Business and Human Rights: Improving the Effectiveness of Non-Judicial Grievance Mechanisms

EXPERT MEETING

(Roundtable, Chatham House rule)

Sharing experiences and finding practical solutions regarding the implementation of the UNGP's effectiveness criteria in grievance mechanisms.

Sophialaan 10, The Hague, 3-4 April 2014

Co-organized by ACCESS Facility and the United Nations Working Group on Business and Human Rights, in cooperation with the OECD Working Party on Responsible Business Conduct, and hosted by The Hague Institute for Global Justice.

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The Hague Institute
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1. Context of the Expert Meeting

ACCESS is a neutral space in which a broad range of stakeholders can learn, explore, share ideas, forge relationships, and find solutions that work for them.

On April 3rd and 4th 2014, ACCESS Facility held the Expert Meeting “Sharing experiences and finding practical solutions regarding the implementation of the UNGP’s effectiveness criteria in grievance mechanisms”. With a view to enhancing access to effective remedy in the context of business and human rights, the objectives of the meeting were to (i) gain a more granular understanding of the challenges faced by users and operators of non-judicial mechanisms; and (ii) prioritize issues for further inquiry and action by operators of non-judicial mechanisms, their stakeholders, and ACCESS. This expert meeting is the first of a series of meetings, consultations and seminars ACCESS Facility will organize in order to help crystallize critical questions to which parties need better and more practical answers.

The expert meeting was held under the Chatham House Rule to ensure a safe space to talk. It was organized in a small-group discussion format and the conversations were facilitated by professional facilitators. Participants were encouraged to proactively engage with each other and critically discuss the following overarching questions:

- To what extent are non-judicial mechanisms effective in providing justice and remedy?
- How do we know, and how could we know, that the remedies provided are actually making a positive impact for those individuals and communities that have been affected by business operations?
- What can be done to ensure that non-judicial mechanisms provide sustainable solutions and prevent new conflicts?

A background paper served as starting point for discussions. The paper summarized the findings from nearly 40 interviews with a variety of operators of non-judicial mechanisms and their stakeholders conducted in preparation of the expert meeting. It identified pressing needs and challenges that a wide range of operators and users of different types of non-judicial mechanisms report facing when providing or seeking access to effective remedy in the context of company-community conflicts. Four ACCESS Case Stories presented snapshots in time of dispute resolution processes building from the voices of stakeholders and third parties, providing some more nuanced examples of these challenges.

The meeting was attended by over 40 experts coming from all corners of the world. It included operators of non-judicial mechanisms, practitioners, facilitators, representatives from civil society organizations, business, government and academia. The diversity among participants contributed to rich discussions that integrated a variety of perspectives and experiences. It resulted in increased awareness on the possibilities and limitations of non-judicial remedy, revealed a lack of clarity about the contextual conditions for the use, applicability and scope of the effectiveness criteria of UN Guiding Principle 31, and a better understanding of the key elements for addressing the systemic contextual need for capacity building in order to increase the effectiveness of non-judicial grievance mechanisms in practice. At the end of two days of in-depth and constructive conversations, elements of a road map were identified that may contribute to build capacity and enhance access to effective remedy and increase the impact of grievance mechanisms on the ground.

This report represents a reflection on the conversations, perspectives and, where there was such, general consensus of the expert meeting. It incorporates ideas, suggestions, agreements and disagreements on the challenges and needs to enhance access to effective remedy through non-

judicial mechanisms. It was prepared by ACCESS staff, taking into account comments from participants on an earlier draft. The report will be made publicly available by ACCESS Facility on www.accessfacility.org, and will be presented to the UNWG on Business and Human Rights with a view to providing input to the UNWG's work on elements of effective remedy, especially on the promotion of convergence and coherence among non-judicial grievance mechanisms.

2. Introduction

The effectiveness criteria articulated under Guiding Principle 31 of the United Nations Guiding Principles on Business and Human rights are the most prominent and authoritative guidance for non-judicial mechanisms to provide access to effective remedy.

On a general level, the meeting highlighted the complexities, weaknesses and successes of the range of existing mechanisms for conflict prevention and resolution. It underlined the urgent need for more nuanced thinking and acting about the application of the United Nations Guiding Principles and the effectiveness criteria in Principle 31. There is a wide spectrum of non-judicial mechanisms: there are private company-designed mechanisms, factory level mechanisms, NGO run mechanisms, national and international state-based mechanisms as well as complaint bodies of international financial institutions and other international governmental organizations. The discussion highlighted that attempting to apply universal principles and approaches to this wide spectrum of mechanisms can be difficult and may not be useful. Instead the group found opportunities in building relational capacities within each sector and among them, creating vertical and horizontal synergies between them, and fostering a change of organizational culture towards conflict management and transformation.

The meeting highlighted the need to consider individual mechanisms within the broader landscape of conflict prevention, conflict resolution and access to remedy for human rights violations. With a broader view to conflict dynamics in a certain context, the group discussed how different types of mechanisms do or should relate to each other, and how and when they do or need to complement and supplement judicial remedy, especially in the absence of effective judicial mechanisms.

The group discussed important issues that apply to individual grievance mechanisms. These included the lack of information on whether and how non-judicial mechanisms do provide remedy in practice; the need to better understand what communities want and expect, and what they think would be fair; as well as the recognition that local communities and affected rights-holders must be more active participants in the design and implementation of grievance mechanisms.

3. Key emerging issues

1. Grievance mechanisms need to be understood as part of a wider system of accountability and remedy

Alternative dispute resolution: Non-judicial remedy as supplement to judicial remedy.

On a general level, the discussion was framed against the backdrop of the broader system for justice and remedy, consisting of judicial and non-judicial mechanisms. Effective, accessible and credible judicial channels were understood to be at the core of that system. They provide an irreplaceable means of remedy and justice that is backed with the power of sanction. Several participants stressed that the strength of non-judicial remedy lies, in part, in the possibility of taking their case to court if the grievance mechanism process was unfruitful. It was argued that access to judicial remedy should serve as leverage; otherwise there is no complementary system.

This discussion invited reflection on the question, “To what extent are judicial and non-judicial mechanisms successful in addressing grievances arising from business operations?” Discussing the relationship between judicial and non-judicial mechanisms, serious concern was expressed about the unavailability of judicial channels in many places. In those circumstances, non-judicial mechanisms may be the only venue that affected parties can turn to. Especially in situations where serious human rights abuses have taken place, the unavailability of an effective judiciary places non-judicial mechanisms in the position of playing a quasi-judicial role. The suitability of non-judicial mechanisms and their capacity to provide remedy in these cases is broadly questioned, although there was not a clear answer on what role non-judicial mechanisms should play in remedying cases of human rights violations in situations where judicial mechanisms are unavailable.

This discussion included an illustration of a case of rape and sexual harassment complaints against a company operating in a country where access to judicial remedy was unavailable. To address the complaints, the company set up an operational-level grievance mechanism to provide an alternative to the affected women in obtaining remedy for the crimes committed against them. Although some relief has been provided to the victims, the remedies have not been satisfactory to all of them. Particularly worrisome to the commentator has been the requirement imposed on the victims to renounce their right to take their case to court as a condition to obtain remedy through the company’s mechanism. This mechanism has been widely criticized by civil society in the field of business and human rights.

ADR without the “A”
“One of the reasons parties have confidence in non-judicial grievance mechanisms is that there is another (judicial) place to turn to. The problem is that in some cases there is nowhere else to turn to”.

The meeting highlighted that access to both judicial and non-judicial remedy remains unavailable in many parts of the world. The system of remedy has gaps that need to be filled. Above all, it is the state’s duty to ensure that access to judicial remedy is available and free of obstacles. There is tremendous work that needs to be done in terms of building states’ capacity to establish rule of law, by forming an accountable government and fairly applying and enforcing the law.

When participants were confronted with the question of how to fill the gaps in the system of remedy, many stressed the importance of supporting credible national governmental institutions. (See below.) Others believed that there is a need for new international institutions. Ideas included an international court and an international arbitration facility, both specialized in business and human rights cases, as well as an international fund that supports capacity building for stakeholders including local communities, civil society, companies, governments and facilitators with expertise in company-community conflicts. Others in the room stressed that, rather than creating new institutions, we should map the landscape and system of remedy, find overlap of roles and possibilities of cooperation, and identify strengths and opportunities of improvement at both the mechanism and systems level.

The role of government in applying international standards.

It was recognized that the existence of rule of law is a factor that influences the success of non-judicial remedy. It was argued that governments have the duty to provide a framework of rights and norms that should be guided by international human rights law. When non-judicial mechanisms operate in a context where national legislation does not comply with internationally agreed standards, it can become challenging for non-judicial mechanisms to ensure that the remedy provided supports such standards and is compatible with human rights. Examples include companies operating in countries that lack a legislative

“Non-judicial mechanisms have no leg to stand on if national legislation is not in tune with international standards. Western-based companies operating in countries with deficient rule of law have trouble operating up to international standards in a context where these are not observed or not seen as relevant.”

framework that recognizes international labor standards included in the core ILO Conventions. When violations to labor rights occur and grievances are brought to a non-judicial mechanism to handle it, it might be challenging for the aggrieved party to obtain an outcome that supports – let alone implements – international labor standards that go beyond the standards recognized in national legislation. Participants suggested that governments be urged to prevent situations where responsible corporate behavior is not supported by national laws.

The roles of different types of non-judicial grievance mechanisms.

Discussion identified a wide spectrum of non-judicial mechanisms. There are operational-level mechanisms operated by companies and factories along the supply the chain. There are multi-stakeholder mechanisms addressing sector- or industry-specific issues. And there are institutional-level mechanisms run by financial institutions, international organizations, and governmental institutions. These different types of mechanisms differ in role, function, process, and scope. Some provide for a dialogue-based process, others provide for semi-adjudicative processes, while others employ a mix of both processes. Their roles can differ and may involve early detection, complaint resolution, ensuring compliance with certain standards or frameworks, promotion of policy changes, and compensation for rights violations. Participants agreed that there is a pressing need to better understand the various roles that different non-judicial mechanisms play and could play in providing remedy to certain types of grievances.

Furthermore, it was argued that different types of grievances or conflicts require different types of solutions. It was highlighted that more work needs to be done to improve our understanding of what works best when it comes to remedying different types of disputes and grievances. It was emphasized that a more holistic approach is needed to assess how the system of remedy is addressing the universe of company-community conflicts. By taking this approach, it will be possible to design a more coherent system that is composed of inter-linked mechanisms that have well-defined purposes and roles.

While all mechanisms should be held accountable for reaching outcomes that comply with international standards, in practice different types of mechanisms seem likely to be more responsive to different kinds of grievances and patterns of grievances. Starting on the *operational level*, it was recognized that mechanisms operating on the ground and close to the people and places that are being affected by business operations, may be better positioned than other mechanisms to detect grievances at an early stage. For example, individuals whose property becomes damaged due to nearby explorations could make use of a local mechanism. *Systemic issues* affecting a specific industry or region were broadly thought to be better handled by multi-stakeholder initiatives and sector-level mechanisms. For example, mechanisms addressing grievances within the electronics industry in a country could more easily address systemic labor issues that involve the manufacturing plants that supply one or more multinational companies. And finally, influencing policies of companies and, in some cases of governments, may be done more successfully by mechanisms at the institutional level, i.e. mechanisms of financial and governmental institutions and international organizations. For example, development banks have been successful in some cases in influencing the policies and corporate behavior of the companies they invest in. In recent years, banks are increasingly putting as a condition to financing a project the establishment of a complaints

Influence of banks on non-judicial remedy. *“In one case, a company-based mechanism run by an investee company was in first instance not being used by indigenous communities. The communities used the mechanism only after an indigenous representative was appointed as community liaison officer, as requested by the bank.”*

mechanism. In some cases banks have intervened in the design process, by assessing the mechanisms and requesting modifications to their design when not appropriate. Although many companies tend to be preoccupied with grievance mechanisms as a CSR policy tool, these revision processes and oversight by international financial institutions seem to have contributed to increase the quality of the mechanisms.

Informed choice on which mechanism to use.

A mismatch of expectations occurs when users lack clear information about the types of mechanisms that are available to them. Users of non-judicial mechanisms do not always have access to clear information about the existing landscape of non-judicial mechanisms, or the different roles and purposes that different types of mechanisms have. Under these circumstances, choosing a mechanism that does not match the needs of users is unlikely to provide effective remedy. An example used to illustrate this situation is the case of a group of factory workers who have a collective grievance. They believe it could be best resolved through the implementation of policy changes in the company. If these workers make use of a mechanism designed only to provide remedy for individual grievances, they will not achieve the desired outcome. Although the workers could get individual compensation for the violations incurred, the underlying, structural problem will remain and will not stop similar grievances in the future. It was emphasized that users need more guidance that allows them to make informed decisions about the mechanisms that best suit their needs and interests.

It was also discussed that operators of non-judicial mechanisms may often lack awareness of other non-judicial mechanisms, or may not communicate in a clear manner what their purpose and role within the broader landscape of remedy may be. To this point, a debate about the purpose and roles of NCPs took place where two perspectives were presented. One perspective defined an NCP’s purpose as providing remedy to affected parties through mediated processes. A second perspective defined it as providing guidance to companies on how they can improve the implementation of the OECD Guidelines for Multinational Enterprises to *prevent* violations in the future rather than *providing remedy* for harm done. There are multiple interpretations among NCPs about what their role in addressing company-community conflicts should be. It was emphasized that it is critical to communicate to users the diverse roles that one type of mechanism can have. There was concern about the lack of clear information available to parties when they make use of this type of mechanism. For example, if parties access NCPs expecting remedy in the form of compensation and do not get it, they will feel like the mechanism let them down.

2. *There is a need to better incorporate the voices of affected stakeholders into non-judicial mechanisms*

The sense of the meeting was that there is substantial need to enhance mechanisms’ understanding of stakeholder interests, perspectives and priorities by including in their processes risk assessments and stakeholder consultations. The discussions around cases of successful and non-successful remedy highlighted that assimilating the needs of affected stakeholders into the non-judicial process and its outcomes is essential. A mechanism that understands the real needs of the

“If mechanisms are distant, difficult to access and expensive, often they will only be accessed after the problem has escalated to such a level that providing remedy will be much more difficult”.

parties involved in a dispute is better prepared to respond to them throughout the entire process. Understanding the needs of stakeholders, particularly those of the directly affected parties, can have an impact in all stages of the process. For example, accessibility of mechanisms with a large number of

complainants originating in Mongolia will be compromised if the mechanism publishes relevant information only in prominently-Western languages. A mechanism that brings to the table high-level

representatives of the parties to a dispute may indicate that parties have forgotten that a sustainable outcome should also include the perspectives of the directly-affected parties on what they believe is fair. And an industry-level mechanism that handles large numbers of grievances on a case-by-case basis involving labor discrimination may be missing the opportunity of establishing a broader dialogue that includes the government to remedy the systemic issue.

It was broadly underlined that operational-level mechanisms should conduct risk assessments that identify the type of conflicts that can be expected to arise. For dialogue-based mechanisms, consultation processes are also an important tool in ensuring that the conflict resolution process and its outcomes are co-designed together with the directly affected parties and relevant stakeholders. When entire communities have been affected and including them all in a dialogue process is not possible, it was deemed very important that the representative be *legitimate* in the sense that he or she truly represents the interests of all and not only of the dominant group within a community. It was noted that identifying a legitimate representative is usually very challenging because communities are rarely homogenous and are often fragmented. Consultation involves a lengthy process where the social and hierarchical structures of the community can be identified.

“There is an industry out there telling headquarters of companies ‘You need a Ruggie complaint mechanism’. Companies roll that out. However, the last criterion of UN Guiding Principle 31 that requires engagement of stakeholders in the design and performance of an operational-level mechanism, is often ignored.”

An increased awareness of the concerns, needs and interests of (potentially) affected parties translates in predictability for the operator of mechanisms. They learn what they can expect to be brought to the mechanism and by what type of people. However, it was recognized that these stakeholder processes can demand time, skills, and financial and human resources that most mechanisms lack. It was suggested that increased collaboration among companies, industry associations and other type of actors across national, regional and international levels should be taking place.

There also seemed to be substantial consensus on the pressing need to build the capacity of stakeholders to participate in non-judicial mechanisms on an equal footing. Effective remedy can be seen as a two-sided coin: it requires both the mechanism and its users to be aware of the system of remedy, to have skills in conflict resolution and to understand the relationships among business and human rights. When affected parties are *unaware of the system of remedy*, they will not have the possibility of making an informed decision on the type of mechanism (judicial or non-judicial) that is available to them and which is the most suitable to address their grievance. When affected parties *lack skills of conflict resolution*, they might enter a non-judicial mechanism with fear or distrust, not knowing what to expect of the process and, perhaps, not knowing how to engage in a dialogue process with their counterparties. Finally, when affected parties do not *understand the relationship between business and human rights*, they might not be aware of when their rights are being violated by business operations and might not be well informed about the rights to which they are entitled and that must be respected by companies. It was argued that knowledge of their rights is key for affected parties to obtain a fair, rights-compatible outcome in all types of grievance mechanisms.

It was recognized that capacity building is needed for all actors involved: operators of mechanisms, affected parties and relevant stakeholders, including companies, civil society and governments. However, due to imbalances in power and financial means, there was an emphasis on affected parties. Affected parties usually lack the aforementioned knowledge and skills. This puts them in a disadvantaged position when they make use of a non-judicial mechanism to obtain remedy. Next to the non-judicial mechanisms themselves, it was thought that civil society organizations may be the

best enablers of this type of information. Professional facilitators specialized in company-community conflicts were noted as having been valuable actors in providing all parties to a conflict the necessary conflict resolution skills.

3. Evaluating the effectiveness of remedy

Drawing on their own research and experience, the expert meeting participants broadly concluded that non-judicial mechanisms and the remedy they provide often fall short of providing sufficient access to effective remedy for affected parties.

NCPs

With regard to the National Contact Points (NCPs), a great differentiation among NCPs with regard to their policies, work methods, visibility and accessibility was underscored. It appears that NCPs, in general, are more focused on future policy development than on providing remedy for grievances of affected communities. Although the Procedural Guidance to NCPs do not specifically mention remedy, this does not preclude parties from agreeing on remedial measures. Also, while the actions of NCPs have in some instances led to changes of a company's human rights policy, they have not often resulted in meaningful impacts on the ground in that specific case. There was a general perception that improving implementation deficits in the implementation of the OECD Guidelines by multinational companies is more at the heart of the NCPs than is a compliance check on the ground.

It was suggested that this could be in part due to an NCP system where, often enough, companies and international NGO representatives negotiate at the NCP or parent company's headquarters. It was noted that NCPs (and NGOs or trade unions when filing complaints) bear responsibility for engaging local communities in their processes. There was ample agreement among participants that NCPs need to increase their efforts to make sure that the affected parties engage or take part in NCP-sponsored dialogue or mediation. In order for NCPs to improve the access to actual remedy for affected parties, capacity building of communities, practical implementation tools for businesses and more interaction between NCP and local stakeholders (among other measures) could be required.

The independence of NCPs was discussed and questioned. NCPs are often located in the same ministry designed to promote trade and investment. It was argued that this can cause a conflict of interest, especially in the perception of the affected party. Furthermore, it was mentioned that there is a lack of accessibility, with many NCPs lacking a public face or not responding to users' or even peer NCPs' requests. There was a sense that governments should take steps to ensure that their NCPs have a real ability to operate impartially.

There also appeared to participants to be deficits in the ability of NCPs to monitor and evaluate agreements reached in order to ensure that they are implemented in a satisfactory manner, as well as to provide evidence that the involvement of the NCP has an impact on the ground. Such capacity depends to some extent on whether the language in the agreements is precise in terms of what parties are expected to do what and by when measures agreed upon should be carried out, as well as who should be involved to develop and/or monitor each element of an agreement. While there was a sense of increased expectations for NCPs to act as problem-solvers between companies and local communities, there was not a commensurate sense that governments provide their NCPs with sufficient resources. As a result, many NCPs reportedly do not have the time, the access to expertise or the skills necessary to facilitate such dialogue. A first step might be to provide NCPs with relevant skills, for instance through NCP-specific mediation training. Also, some encouraged the OECD to continue efforts to increase exchange of practical know-how between NCPs. NCP mediation practices as well as emerging NCP 'jurisprudence' may add to common insight on the due diligence of companies, as well as on approaches to providing access to remedy and pro-active prevention of human rights violations.

International Financial Institutions

With regard to financial institutions, several participants noted that local communities are often not aware that a particular project is financed by a financial institution and/or that the financial institution has a grievance mechanism they can complain to. Participants expressed concerns that the compliance review of a financial institution's grievance or compliance mechanism often ends with recommendations only, which the company may feel less obliged to implement. It was suggested that, by making the recommendation public, companies would be more likely to follow up.

Company Mechanisms

In discussions about company-based mechanisms, concerns regarding their legitimacy were raised. Potential complainants often fear that, if they use a company's internal grievance process, there will be retaliation or their complaint will not be dealt with fairly. According to the experience of some participants, operational-level mechanisms are rarely designed in consultation with users, leading to a lack of trust in the process from the start. Furthermore, these grievance mechanisms are not always transparent as to how they deal with complaints, leading to a further missed opportunity to build trust in the mechanism. Often there are also questions of accessibility, for example, with grievance mechanisms not being accessible by temporary workers, or users not being informed as to the existence of the mechanism.

Rights-compatible remedy

Rights-compatible remedy was a subject of particularly intense discussion during the expert meeting. Some specific company-level mechanisms were criticized for not being rights-compatible. Some strongly argued that particular mechanisms did not address or remediate the particular harm with an appropriate remedy, did not give room for meaningful consultation, did not provide information about the expected or ongoing process in a transparent manner, unnecessarily created barriers to judicial remedy for claimants, or undermined the building of trust and confidence in the mechanism and its processes.

There was also a debate around some specific cases where outcomes of non-judicial processes gave some relief to affected parties but did not meet international standards. One example shared in the meeting involved a factory worker who had not been paid the full wage he was entitled to for several months. The factory was going bankrupt and its creditors had already secured payment of debts. The factory offered to pay only part of the wages owed to the worker under the law. Desperate for money, and with no time to wait for a long procedure in court, the factory worker accepted this sub-standard remedy. This case has a clearly defined standard (the right to a fair wage and compliance with applicable laws) that provides an indication of what a rights-compatible remedy should be. This example gave rise to two perspectives. On the one hand, some viewed this result as an immediate relief to a case that would otherwise not have been resolved or brought to court. On the other hand, some disapproved of the remedy provided to the worker because it was not in accordance with applicable laws. A case was made to incorporate more guidance from human rights law, particularly when assessing mechanisms that are providing remedies where gross human rights violations and other serious abuses are implicated.

From this debate two further issues were highlighted. **First, there are limited criteria or guidance available for the evaluation of the effectiveness of remedy.** The diversity of mechanisms requires

"In order to be effective, outcomes should be fair from the user's perspective."

recognizing that the effectiveness criteria of UN Guiding Principle 31 do not represent a one-size-fits-all model. By themselves, the effectiveness criteria do not constitute a sufficient basis for an assessment of a grievance

mechanism. The criteria are broad and abstract. As companies and international institutions continue to implement grievance mechanisms, it was recognized that there is a need for further guidance that

would allow specific parties to give content and meaning to the principles within a specific context. It was also pointed out that not all grievances and remedies are framed in terms of human rights by the affected parties. Some felt that broader concepts of justice and fairness could be used as guiding principles, even as it was recognized that these notions are also too fluid to serve as a measure of assessment without further specification within a particular context.

One of the main conclusions in this respect was a call for placing the needs of the affected parties and what is, in their perspective, a fair and effective remedy at the core of the evaluation of outcomes. This process would necessarily involve developing participatory processes where the affected parties are empowered to co-design and oversee the implementation of remedies, as well as the evaluation of their impacts.

Second, there is limited data available to evaluate the effectiveness of remedy. Once an agreement is made in the context of the mechanism’s procedures, non-judicial mechanisms do not typically follow up with affected parties to determine whether the grievance has been fairly resolved. In some cases, the parties have returned to the mechanisms to start a new conflict resolution process because the agreement initially reached was not sustainable. Without information about what happens to the parties after an agreement is reached, particularly in complex cases involving several parties, it is argued that we cannot know whether the outcomes of mechanisms are effective.

“What worked very well was that there was a series of accumulated agreements from early on in the mediation process. One of the first agreements was providing food to the sick and their families, i.e. immediate relief with a tangible result and impact.”

This discussion highlighted the urgency for mechanisms to, first, put in place follow-up procedures that can help them monitor the implementation of the agreement by the parties. Such procedures can provide valuable information to operators of mechanisms about what components of their processes and outcomes are working and what needs improvement. Second, there was an acknowledgement of the need to improve the transparency of mechanisms and their proceedings. It was suggested that mechanisms should publish cases that outline which approaches are working and which ones are not. However, it was warned that a balance between accountability and protection of privacy of the parties should be found.

4. Success factors and enablers for access to remedy

The Expert Meeting explored factors that support access to remedy. Discussions highlighted a range of factors, including a combination of compliance and dialogue based approaches; involvement of (top) management besides the lawyers; and capacity and resources aligned with expectations. For some cases it seemed that acknowledgement of abuse by the company supported a sustainable outcome. There was general consensus that a successful grievance mechanism is designed in collaboration with affected communities, providing appropriate channels for filing grievances, investigation, and dispute resolution. There may also be benefits to participation in the investigation process by stakeholders from the community.

“Next to receiving and addressing grievances directed to their own operations, a company-level grievance mechanism will allow companies to receive and address complaints directed to business conduct of their sub-contractors, enabling them to influence their sub-contractors to adjust their policies and provide for prompt resolution of grievances - such as paying their workers for overtime and bringing the contracts with all their employees in line with the actual working time. A company-level mechanism will therefore help companies to better monitor their sub-contractors.”

Government involvement as such is an important enabler. State endorsement of a grievance mechanism helps the mechanism to work, specifically when governments ratify what has been agreed upon by the parties.

An important success factor mentioned was the existence of the Guiding Principles. Outreach on the Principles has created awareness. The Principles seem to have achieved a level of agreement among sectors, which is useful for people on the ground. Support from financiers and NGOs could be a further contributor and enabler of awareness.

Finally, meeting participants emphasized the importance of positive examples and the sharing of real-world experiences as enablers of access to remedy.

4. Conclusions and next steps

The discussion and deliberation were extremely rich and diverse but all the same emerged with some consensus themes. Debate served to promote better understanding:

1. That non-judicial mechanisms must be better situated within a broader system of remedy and access to justice and that relationships among diverse judicial and non-judicial mechanisms must be better understood and harmonized;
2. That the needs, interests, perspectives and priorities of stakeholders in the processes and outcomes of non-judicial mechanisms must be more urgently assimilated;
3. That further guidance is needed to support more rigorous data collection and evaluation of the effectiveness of the remedies provided by non-judicial mechanisms, individually and in the aggregate.

In general terms, participants voiced the need to continue organizing activities that advance understanding of the Guiding Principles as they apply within specific contexts. More exchange of ideas and experiences would be important. At the same time, participants warned against being too prescriptive. They highlighted the need to support and accompany affected parties as they develop their own interest-based, rights-compatible solutions.

5. Follow up by ACCESS Facility

In addition the general steps suggested by participants, below is a list of actions that were requested to be undertaken by ACCESS:

1. Organizing more meetings in the future that discuss challenges that are specific to different types of mechanisms, industries, regions, or contexts.
2. Forge partnerships among organizations working on the evaluation of grievance mechanisms in the field.
3. Further explore and elaborate proposals on the development of guidance for the collaborative evaluation of non-judicial grievance mechanisms by affected parties.
4. Building relationships among different organizations so that different organizations can benefit from a community of learning.
5. Including in ACCESS website a list of references to organizations that are involved in the field of non-judicial conflict resolution to which interested parties can refer.

ACCESS would like to thank all experts and practitioners who took part in the expert meeting and contributed to this report. ACCESS would like to thank the co-organizers, donors and co-sponsors for making this important event possible.

6. Participants List

ACCESS Facility Expert Meeting - 3 & 4 April 2014 in The Hague, the Netherlands


"Sharing experiences and practical solutions regarding the implementation of the UNGP's effectiveness criteria in grievance mechanisms"

Participants List

Last Name	First Name	Organization	Position
Aba	Elodie	Business and Human Rights Resource Center	Legal Researcher
Alcarpe	Felismino	European Investment Bank - Complaints Mechanism	Head of Complaints Mechanism
Amstel, van	Nelleke	Geneva Centre for the Democratic Control of Armed Forces (DCAF)	Project Officer
Appiah	Manuella	The Hague Institute for Global Justice	Researcher, Global Governance Program
Bangstad	Mari	OECD NCP Norway	Advisor
Bell	Stuart	Ergon Associates Ltd	Director - Policy
Bliss	Matthew	Cordaid	Director, Extractives
Bronkhorst	Serge	ACCESS Facility	Managing Director
Buhmann	Karin	OECD NCP Denmark	Member
Calero Leyva	Maria Elvira	OECD NCP Colombia	Member
Camstra	Francis	ACCESS Facility	Operations and Content Manager
Cedillo	Cristina	ACCESS Facility	Project Officer
de Felice	Damiano	London School of Economics (LSE)	PhD Candidate
Eijsbouts	Jan	Maastricht University	Extraordinary Professor CSR and Professorial Fellow of the Institute of Corporate Law, Governance and Innovation Policies
Evers	Frans	OECD NCP Netherlands	Chairman
Flemming	Dennis	Niger Delta Partnership Initiative(NDPI) Foundation	Executive Director
Friedmann	Rémy	Swiss Federal Department of Foreign Affairs	Senior Advisor - Desk Human Security and Business
Ganson	Brian	Africa Centre for Dispute Settlement	Senior Researcher
Genovese	Kristen	The Centre for Research on Multinational Corporations (SOMO)	Senior Researcher
Goedhart	Gilles	Dutch Ministry of Foreign Affairs	Senior Policy Advisor Human Rights Division
Hernanz	Arantza	Repsol	Deputy Director of CSR
Houde	Marie-France	OECD	Head of OECD MNEs Guidelines Unit

Knuckey	Sarah	New York University	Professor, lawyer, Special Advisor to UN Special Rapporteur
Kovick	David	Shift	Senior Advisor
Lamptey	Lauretta	Commission on Human Rights and Administrative Justice (CHRAJ) of Ghana	Commissioner
Lefeber	René	Council of Europe: Drafting Group on Human Rights and Business (CDDH-CORP)	Chair
Lumerman	Pablo	Community of Practice of Dialogue Facilitators	Chair
Moniaga	Sandra	National Commission on Human Rights of the Republic of Indonesia (Kommas HAM)	Commissioner
Morgenthau	Tamara	New York University (NYU)	LL.M. Student
Nieuwenkamp	Roel	OECD Working Party on Responsible Business Conduct	Chair
Ochoa	Juan Carlos	University of Oslo	Postdoctoral Fellow
Plumb	David	Consensus Building Institute	Director, Latin America
Putten, van	Maartje	European Investment Bank - Complaints Mechanism	Senior Advisor
Ramachandra	Komala	Accountability Counsel	South Asia Director
Rodenhäuser	Tilman	Geneva Centre for the Democratic Control of Armed Forces (DCAF)	Researcher
Scheltema	Martijn	Erasmus University Rotterdam	Professor international private law
Schneider	Johannes	OECD NCP Switzerland	Advisor
Selm, van	Alexandra	The Social and Economic Council of the Netherlands (SER)	Senior Advisor, Socio-Economic Affairs
Thompson	Benjamin	ACCESS Facility	Intern
Vrieling	Margreet	Fair Wear Foundation	Head of Verification
Weerd, van de	Dewi	Dutch Ministry of Foreign Affairs	Deputy Head Human Rights Division
Wesselink	Egbert	Pax Christi	Senior Advisor
Wiggers-Rust	Lidy F.	Court of Appeal 'Gerechtshof Arnhem-Leeuwarden'	Judge
Wilde-Ramsing	Joseph	The Centre for Research on Multinational Corporations (SOMO)	Senior Researcher
Wilson	Emma	International Institute for Environment and Development (IIED)	Senior Researcher
Wolvekamp	Paul	Roundtable on Sustainable Palm Oil (RSPO)	Co-chair of the Dispute Settlement Facility
Zomeren, van	Frederique	ACCESS Facility	Senior Advisor

Annex: Program

Day 1 – Thursday 3 April 2014	
09.00	Continental breakfast and registration
10.00	Welcome and opening by the Chair of the day: Roel Nieuwenkamp, Chair of the OECD Working Party on Responsible Business Conduct.
10:15	Introduction to the expert meeting: Alexandra Guáqueta, member of the UNWG on Business and Human Rights Serge Bronkhorst, Managing Director of ACCESS Facility
10.30	Introduction of the participants
	SESSION I: ASSESS
	To what extent have grievance mechanisms contributed to access to justice / remedy for affected stakeholders?
10:45	Facilitator: David Kovick <ul style="list-style-type: none"> ○ <i>In what ways and to what extent do they have an impact on the ground?</i> ○ <i>In what ways and to what extent do they provide “effective remedy?”</i> ○ <i>In what ways and to what extent do they sustainably solve problems and prevent new conflicts?</i> ○ <i>In what ways and to what extent do they contribute to change of behavior and practice of companies?</i> ○ <i>How do we know?</i>
11.45	Coffee break
12.15	Resume SESSION I: ASSESS
13.00	Lunch
	SESSION II: EXPLORE
	What are the challenges and opportunities for grievance mechanisms in ensuring impact on its stakeholders?
14.00	Facilitator: David Plumb <ul style="list-style-type: none"> ○ <i>What are the challenges grievance mechanisms face? Challenges may include those identified during the interviews, such as:</i> <ul style="list-style-type: none"> ▪ <i>Participatory design and ownership</i> ▪ <i>Accessibility in practice</i> ▪ <i>Challenges of resolution in dialogue-based processes</i> ▪ <i>Follow-through and implementation of agreed upon outcomes</i> ▪ <i>Analysis/learning from grievances to prevent recurrence and improve conditions</i> ○ <i>What are the positive dynamics?</i> ○ <i>What are we learning from practical experience?</i>
15.30	Coffee break
16.00	Resume SESSION II: EXPLORE
17.30	Closure first day.
17.45	Departure for reception at Bilderberg Hotel
18.30	Reception
19.15	Dinner - offered by the City of The Hague 
21.30	Closing

Day 2 – Friday 4 April 2014	
09.30	Opening by Chair of the day: Serge Bronkhorst, Managing Director of ACCESS Facility
09.35	Resume SESSION II: EXPLORE
	<i>Work in smaller groups in order to increase understanding of some key issues identified on day one that are supporting better outcomes, or standing in the way. Feedback to the plenary and discussion.</i>
11.00	Coffee break
	SESSION III: Construct
	What are the resources that would help grievance mechanisms address the priority issues identified?
11.30	Facilitator: Pablo Lumerman <ul style="list-style-type: none"> ○ <i>What do GMs need from governments?</i> ○ <i>What do GMs need from multilateral institutions that created these mechanisms?</i> ○ <i>What do GMs need from corporations?</i> ○ <i>What do GMs need from civil society organization and community based organizations?</i> ○ <i>What kinds of resources would help GMs most in tackling these challenges in the future?</i>
12.30	Lunch
	Resume SESSION III: CONSTRUCT
13.30	<i>What does the future roadmap look like for grievance mechanisms?</i>
14.45	Coffee break
	SESSION IV: CONCLUSIONS AND NEXT STEPS
15.15	Facilitator: Brian Ganson
16.20	Closing remarks
16.30	End of the meeting